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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Argentina, Australia, Austria, Belgium, Canada, Costa Rica, Cyprus, Denmark, Ethiopia, Finland, France, Gambia, Germany, Hungary, Iceland, Italy, Lesotho, Liechtenstein, Nigeria, Norway, Poland, Rwanda, Slovenia, Sweden and United Republic of Tanzania: draft resolution

Human rights in the administration of justice

The General Assembly,

Recalling its resolution 46/120 of 17 December 1991,

Bearing in mind the principles embodied in articles 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights 1/ and the relevant provisions of the International Covenant on Civil and Political Rights 2/ and its Optional Protocols, 3/ in particular article 6 of the Covenant, which explicitly states that no one shall be arbitrarily deprived of his life and prohibits the imposition of the death penalty for crimes committed by persons below eighteen years of age,

Bearing in mind also the relevant principles embodied in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 4/

1/ Resolution 217 A (III).

2/ Resolution 2200 A (XXI), annex.

3/ See resolution 2200 A (XXI), annex, and resolution 44/128, annex.

4/ Resolution 39/46, annex.

and in the International Convention on the Elimination of All Forms of Racial Discrimination, 5/

Mindful of the Convention on the Elimination of All Forms of Discrimination against Women, 6/ in particular of the obligation of States to treat men and women equally in all stages of procedures in courts and tribunals,

Calling attention to the numerous international standards in the field of the administration of justice, such as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 7/ the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 8/ and the safeguards guaranteeing protection of the rights of those facing the death penalty, 9/ as well as the Basic Principles on the Independence of the Judiciary, 10/ the Basic Principles on the Role of Lawyers, 11/ the Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners, 10/ as well as the Code of Conduct for Law Enforcement Officials, 12/ the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 11/ the Standard Minimum Rules for the Treatment of Prisoners, 13/ the Basic Principles for the Treatment of Prisoners, 14/ the United Nations Rules for the Protection of Juveniles Deprived of their

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5/ Resolution 2106 A (XX), annex.

6/ Resolution 34/180, annex.

7/ Resolution 43/173, annex.

8/ Resolution 40/34, annex.

9/ See Official Records of the Economic and Social Council, 1984, Supplement No. 1 (E/1984/84), resolution 1984/50.

10/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.

11/ See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.

12/ Resolution 34/169, annex.

13/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1).

14/ Resolution 45/111, annex.

Liberty, 15/ the Guidelines on the Role of Prosecutors, 16/ the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), 17/ the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), 18/ the Model Treaty on the Transfer of Proceedings in Criminal Matters 19/ and the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, 20/

Recalling its resolution 47/133 of 18 December 1992, by which it adopted the Declaration on the Protection of All Persons from Enforced Disappearance,

Welcoming the important work of the Commission on Human Rights and of the Subcommission on Prevention of Discrimination and Protection of Minorities in the field of human rights in the administration of justice, in particular regarding the independence of the judiciary, the independence of judges and lawyers, the right to a fair trial, habeas corpus, human rights and states of emergency, the question of arbitrary detention, the human rights of juveniles in detention, the privatization of prisons and the question of the impunity of perpetrators of violations of human rights,

Noting resolution 1993/39 of the Subcommission on Prevention of Discrimination and Protection of Minorities, entitled "Independence of the judiciary",

Welcoming Commission on Human Rights resolutions 1993/32 of 5 March 1993, entitled "The administration of justice and human rights", and 1993/41 of 5 March 1993, entitled "Human rights in the administration of justice",

Welcoming also the important work of the Commission on Crime Prevention and Criminal Justice in the field of human rights in the administration of justice, as reflected in section III of Economic and Social Council resolution 1993/34 of 27 July 1993,

Recognizing that the rule of law and the proper administration of justice are prerequisites for sustainable economic and social development,

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15/ Resolution 45/113, annex.

16/ See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. C, resolution 26.

17/ Resolution 45/110, annex.

18/ Resolution 40/33, annex.

19/ See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, A, 12.

20/ See Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31).

Recognizing that the rule of law and the proper administration of justice are prerequisites for sustainable economic and social development,

Recognizing also the central role of the administration of justice in the promotion and protection of human rights,

Aware of the importance of national and regional intergovernmental human rights bodies and institutions in the promotion and protection of human rights,

Having considered the report of the Secretary-General on human rights in the administration of justice, 21/

Mindful of the recommendations relating to human rights in the administration of justice contained in the Vienna Declaration and Programme of Action 22/ adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993,

1. Takes note with appreciation of the report of the Secretary-General on human rights in the administration of justice; 21

2. Reaffirms the importance of the full and effective implementation of all United Nations standards on human rights in the administration of justice;

3. Acknowledges that it is the primary responsibility of all Governments to promote and protect human rights;

4. Acknowledges also that the administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development;

5. Once again calls upon all States to pay due attention to these norms and standards in developing national and regional strategies for their practical implementation and to spare no effort in providing for effective legislative and other mechanisms and procedures, as well as for adequate financial resources to ensure more effective implementation of these norms and standards;

6. Appeals to Governments to include in their national development plans the administration of justice as an integral part of the development process and to allocate adequate resources for the provision of legal-aid services with a view to the promotion and protection of human rights;

7. Urges the Secretary-General to consider favourably requests for assistance by States in the field of the administration of justice within the framework of the United Nations programme of advisory services and technical cooperation in the field of human rights, and to strengthen coordination of activities in this field;

21/ A/48/575.

22/ A/CONF.157/24 (Part I), chap. III.

8. Strongly recommends, in this context, that the establishment of a comprehensive programme within the system of advisory services and technical assistance be considered in order to help States in the task of building and strengthening adequate national structures which have a direct impact on the overall observance of human rights and the maintenance of the rule of law; such a programme should provide, upon the request of the interested Governments, technical and financial assistance to national projects in reforming penal and correctional establishments, education and training of lawyers, judges and security forces in human rights, and any other sphere of activity relevant to the good functioning of the rule of law;

9. Acknowledges that institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community;

10. Appeals to the international community to provide assistance, at the request of the Governments concerned, for the provision of legal-aid services with a view to ensuring the promotion, protection and full enjoyment of human rights;

11. Invites the international community to respond favourably to requests for financial and technical assistance made by institutions concerned with the promotion and protection of human rights, with a view to enhancing and strengthening their national capacities to promote and protect human rights consistent with the standards set forth in international and other human rights instruments;

12. Acknowledges the important role of the regional commissions, specialized agencies and United Nations institutes in the area of human rights and crime prevention and criminal justice and other organizations of the United Nations system, as well as intergovernmental and non-governmental organizations, including national professional associations concerned with promoting United Nations standards in this field;

13. Invites the Commission on Crime Prevention and Criminal Justice to pay particular attention to questions relating to the administration of justice, with special emphasis on the effective implementation of norms and standards;

14. Decides to consider the question of human rights in the administration of justice at its fiftieth session under the agenda item "Human rights questions".